

CRS Report for Congress

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Disaster Evacuation and Displacement Policy: Issues for Congress

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Summary

The devastation caused by Hurricane Katrina reached beyond the borders of the states directly affected by the wind, rain, and floods. Before the storm reached the coast, thousands of residents of Louisiana and Mississippi evacuated to other states, including Texas and Oklahoma. As a result, President Bush issued emergency declarations for 36 states solely to help them meet the needs of evacuees. In general, evacuation policy is set and enforced by state and local officials. However, federal policy does provide for certain aspects of civilian emergency evacuation. Members of Congress may elect to reconsider federal policy options to more fully integrate federal and state authorities through legislation such as H.R. 3815, H.R. 4066, H.R. 4258, H.R. 5351, S. 1685, S. 1807, S. 2124, S. 2133, and S. 3721. This report will be updated.

Using the authority set out in state laws and local ordinances, state and local officials may suggest or require the evacuation of residents from homes and communities before certain catastrophes occur.¹ Threats of pending natural disasters such as hurricanes or floods, warnings of the movement of airborne hazardous material due to transportation accidents, or the recognition of unstable conditions at nuclear power plants may provide officials a short window of opportunity to save thousands of lives by encouraging or mandating civilian evacuation.

To a limited extent, federal statutes authorize agency heads to use federal resources to assist in the evacuation of civilians. For example, a provision in the Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the President to direct the Secretary of Defense to use resources to perform necessary emergency work to preserve

¹ State laws generally authorize the Governor to order and enforce the evacuation of residents under emergency situations. See CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: a Summary*, by Keith Bea, Government and Finance Division, CRS, and L. Cheryl Runyon and Kae M. Warnock, consultants, p. 4.

life and property even before the President issues a major disaster or emergency declaration.²

The complications and suffering associated with Hurricane Katrina demonstrated that the evacuation and the relocation of tens of thousands of residents pose enormous challenges for public officials after catastrophes occur. Due to limitations involving medical, income, or transportation needs, or for other reasons, many did not or could not heed the warnings. The flooding of New Orleans and the widespread destruction of infrastructure in Mississippi and Louisiana caused by Hurricane Katrina have resulted in thousands of persons remaining homeless for many months, and may possibly lead to the permanent relocation of entire communities.³ The issue before Congress is the scope and reach of federal policy regarding the evacuation of civilians and their resettlement and the implementation of that policy in light of the traditional role exercised by state authorities.

Evacuation Policy

In general, federal policy defers to the states to enact laws pertinent to evacuation, and local officials generally work with state officials to enforce those laws. For example, the *National Response Plan* (NRP), administered by the Federal Emergency Management Agency (FEMA) in the Department of Homeland Security (DHS), sets forth the roles and responsibilities of federal and certain non-federal entities after catastrophes overwhelm state or local governments. The NRP includes the following in a list of responsibilities of local chief executive officers:

Dependent upon state and local law, [the local executive] has extraordinary powers to suspend local laws and ordinances, such as to establish a curfew, direct evacuations, and, in coordination with the local health authority, to order a quarantine.⁴

Federal officials facilitate evacuation procedures when the NRP is invoked, take the lead on coordinating necessary decisions, support search and rescue efforts, and provide

² 42 U.S.C. 5170b(c). For background on the Stafford Act and presidential declaration authority, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

³ Comprehensive or official statistics on the number of evacuees are not available. Weeks after Hurricane Katrina landed, one news report estimated that over 1 million persons may have evacuated. See Peter Grier, "The Great Katrina Migration," *The Christian Science Monitor*, Sept. 12, 2005, on-line version. One indicator of the size of the evacuated population is found in the hotel invoice averages compiled (over a 14-day period) by FEMA in *Report on Hotel Use: Hurricanes Katrina and Rita*, Dec. 29, 2005, available at [http://www.fema.gov/pdf/press/katrina_after/14dayhotel.pdf], visited Jan. 3, 2006.

⁴ U.S. Department of Homeland Security, *The National Response Plan* (Washington: 2004), p. 8. Hereafter cited as NRP. Similar text is used to describe the role of tribal chief executive officers. See also p. 53 of the NRP (initial actions taken by first responders and local government authorities including evacuations) and p. 54 (response actions that may involve federal assistance including law enforcement and evacuations).

technical assistance.⁵ In the event of the most catastrophic incidents, “the federal government or other national entities” are expected to provide public health, medical, and mental health support at casualty evacuation points and refugee shelters.⁶

Federal law contains provisions related to the evacuation of civilians and planning requirements within the United States, under specified circumstances. General authority is also given to federal agencies for emergency preparedness activities that include evacuation planning. These authorities are cited in **Table 1**.⁷

Table 1. Federal Statutory Emergency Evacuation Provisions

Summary	Citation
Federal employees and their dependents may receive assistance if they must evacuate.	5 U.S.C. 5709, 5725, 5922, 5923
The role of FEMA includes evacuating disaster victims.	6 U.S.C. 317
National Construction Safety Teams must evaluate technical aspects of evacuation procedures and recommend research.	15 U.S.C. 7301, 7307-7308
Areas adjacent to evacuation routes may require wildfire fuel reduction efforts	16 U.S.C. 6511
Emergency preparedness activities include non-military civilian evacuation and evacuation of personnel during hazards.	42 U.S.C. 5195a
Computer models for evacuation must be periodically evaluated and improved.	42 U.S.C. 7403(f)(2)(C)
Temporary housing and evacuation of threatened persons are to be included in the scope of hazardous substance removal.	42 U.S.C. 9601(23)
Emergency plans completed by local emergency planning committees (LEPCs) must include evacuation plans.	42 U.S.C. 11003
Owners of facilities where a hazardous chemical release occurs must provide information on precautions to be taken, including evacuation.	42 U.S.C. 11004(b)(2)

⁵ For example, the Department of Transportation (DOT) Regional Emergency Transportation Coordinator (RETCO) coordinates with state and local authorities on “issues such as movement restrictions, critical facilities closures, and evacuations”; establishes resource priorities; and provides technical assistance. *Ibid.*, p. ESF#1-3, 1-4. The Department of Defense coordinates with DOT to evacuate patients, at the request of the Department of Health and Human Services. *Ibid.*, p. ESF#8-4. See also 44 C.F.R. 352.26, which provides that federal agencies “may be called upon” to provide reception centers or shelters for evacuees.

⁶ NRP, p. CAT-2.

⁷ **Table 1** does not include statutory references to studies and investigatory commission mandates, including those found at 23 U.S.C. 135 note; 49 U.S.C. 5338 note; P.L. 109-59, 119 Stat. 1471.

Summary	Citation
Secretary of Transportation must establish incident response plans for facilities and vessels that include evacuation procedures.	46 U.S.C. 70104(b)
Congressional finding that private and public sector emergency preparedness activities should include an evacuation plan.	P.L. 108-458, §7305, 118 Stat. 3848
Evacuation routes are included as components of the National Highway System high priority corridor designations.	P.L. 109-59, §1304(a), amends P.L. 102-250, 105 Stat. 2032
The Secretary of the Department of Transportation (DOT) and the Secretary of Homeland Security, in coordination with the Gulf Coast States and contiguous states, were required to review and assess federal and state evacuation plans for catastrophic hurricanes impacting the Gulf Coast Region and report, by October 1, 2006, to Congress.	P.L. 109-59, §10204, 119 Stat. 1934

Source: CRS compilation based on database searches conducted by Thomas P. Carr of the Government and Finance Division and D. Randy Peterman, Resources, Science and Industry Division.

Note: **Table 1** excludes statutory provisions found in historical notes, those related to the armed forces, allowances and expenses for federal employees, appropriations, criminal offenses, foreign nations and international relations, liability, specific transportation facilities, and payment of costs.

Displacement and Sheltering

One facet of evacuation is the withdrawal or removal of persons from a stricken or threatened area. Another is the resettlement of the victims, or potential victims, and the provision of shelter and resources in the areas to which those residents are moved — the host areas. The NRP vests responsibility for the coordination of mass care for disaster victims in FEMA and the American Red Cross. With the support of other federal agencies, charitable organizations, the private sector, and individuals, victims of catastrophes may find shelter outside the stricken area for a temporary period of time.⁸

Persons displaced by Hurricanes Katrina and Rita, like other disaster victims, are eligible to receive emergency housing under two Stafford Act authorities. Temporary and immediate assistance is provided under authority of Section 403 of the Stafford Act, which authorizes the provision of emergency shelter.⁹ Such assistance is administered through activities categorized as “Emergency Protective Measures” (referred to as “Category B” of FEMA’s Public Assistance program). Activities supported by FEMA under this authority must be eligible and cost effective, and specifically include the following:

⁸ “Emergency shelter includes the use of pre-identified shelter sites in existing structures...and use of similar facilities outside the incident area, should evacuation be necessary.” NRP, p. ESF#6-2.

⁹ 42 U.S.C. 5170b(a)(3)(B).

Emergency mass care and shelter when such cannot be provided by volunteer agencies. If the applicant's facilities are used by the volunteer agency to provide this care, actual expenses incurred by the applicant, such as supplies or cleanup labor, would be eligible. Expenses of PNPs [private non-profit organizations] for providing these services are not eligible because their services are generally charitable in nature.¹⁰

In addition to the immediate emergency shelter assistance authorized by Section 403 of the Stafford Act, FEMA provides longer-term housing aid. The Individual and Household Program (also referred to as Individual Assistance), authorized by Section 408 of the Stafford Act, provides funds and direct assistance.¹¹ FEMA administers the program that provides financial assistance for alternative accommodations, or direct assistance through modular housing moved to a temporary housing site. In order to make use of this authority, vacant alternative housing units (apartments, motels or hotels, recreational vehicles, modular units) must be found, or sites must be developed for the mobile homes brought on-site by FEMA.

Issues for Congressional Consideration

- The President, at the request of the Governor of a state, is authorized to direct the Secretary of Defense to use resources for emergency work to save lives. The Governors of the states are authorized to direct the evacuation of civilians under the emergency statutory authorities. Congress may elect to revisit the statutory authority in the Stafford Act (42 U.S.C. 5170b(c)) to specifically direct federal resources toward evacuation needs. Also, Congress may elect to review statutory means to expedite the delivery of federal resources and personnel to disaster stricken areas in order to continue the evacuation of civilians and provide necessary care, including medical treatment.
- The Catastrophic Incident Annex of the NRP includes the assumption that large-scale evacuations, whether spontaneous or directed pursuant to authorities, may be more likely to occur after attacks than natural disasters, and that the maintenance of public health will “aggravate attempts to implement a coordinated evacuation management strategy.”¹² In light of concerns raised by some that the NRP, and the focus of DHS, is skewed toward concerns about terrorist attacks, Congress may review whether this assumption adequately addresses the complications evident in the evacuation of civilians before and after Hurricanes Katrina and Rita struck.

¹⁰ U.S. Federal Emergency Management Agency, *Public Assistance Guide*, FEMA 322, available at [http://www.fema.gov/pdf/rrr/pa/pagprnt_071905.pdf], p. 48, visited Jan. 3, 2006.

¹¹ 42 U.S.C. 5174.

¹² NRP, p. CAT-3.

- Persons in the affected population who struggle with disabilities, be they mental or physical, require particular attention and assistance in evacuations. The National Organization on Disability has developed a guide for the consideration of the needs of disabled persons, particularly the evacuation of those individuals from their communities.¹³ Congress could consider whether standing state authorities adequately address the needs of the disabled in evacuation circumstances. For example, H.R. 3815 and S. 1685 assign responsibility for preparing communities to assist persons with special needs. S. 2124 would require that the DHS secretary appoint a “Disability Coordinator” responsible for, among other matters, the dissemination of information on evacuation plans for disabled persons.
- The Stafford Act stipulates that relief and assistance be provided “without discrimination on the grounds of...economic status.”¹⁴ FEMA has responsibility to provide for the evacuation of disaster victims,¹⁵ and provide for evacuation as part of federal emergency preparedness efforts.¹⁶ Congress may assess whether existing evacuation plans and procedures comport with the requirements of the Stafford Act, and whether other efforts are required to ensure that low-income individuals and households receive necessary aid. Low-income households are included in the purview of H.R. 3815 and S. 1685 as “special needs” concerns.
- States that house tens of thousands of disaster victims for many months will face unexpected service delivery burdens, some of which (notably aid provided by private non-profit organizations) may not be reimbursed by FEMA. Congress may examine federal policy options to provide assistance to host states and to ensure that emergency operational plans include evacuation procedures; H.R. 4258 would require standards for such plans. S. 1807 would authorize loans to non-profit organizations.
- Households may be reluctant to evacuate when the implications of a pending catastrophe remain unknown. Congress might consider incentives for evacuations, such as H.R. 4066, which would provide tax incentives to cover certain evacuation costs.

¹³ National Organization on Disability, *Emergency Preparedness Initiative: Guide on the Special Needs of People with Disabilities for Emergency Managers, Planners & Responders*, available at [<http://nod.org/index.cfm?fuseaction=Page.viewPage&pageId=11>], visited Aug. 31, 2005.

¹⁴ 42 U.S.C. 5151(b).

¹⁵ 6 U.S.C. 317.

¹⁶ 42 U.S.C. 5195a.